Supreme Court, U.S.
FILED
JUL 21 1999
OFFICE OF THE CLERK

No. 98-2024

In The

Supreme Court of the United States

MARY E. FURLOW AND LESTER FURLOW,

Petitioners,

v.

ALLIED CONVEYOR, INC. and
DURR INDUSTRIES, INC.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether the respondent, Allied Conveyor, Inc., was entitled to judgment as a matter of law under Rule 50 of the Federal Rules of Civil Procedure.

(2) Whether the District Court properly found that Verdict Form D was a general verdict with written interrogatories under Rule 49(b) of the Federal Rules of Civil Procedure.

(3) Whether the petitioners waived the right to challenge the District Court's interpretation of the jury's verdict by failing to request that the jury be reconvened in order to resume its deliberations.

(4) Whether the entry of judgment in favor of Allied Conveyor, Inc. was against the manifest weight of the evidence and/or constituted an abuse of discretion.

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ARGUMENT

I. The Judgment In Favor of Allied Was Properly Affirmed Because Allied Was Entitled to Judgment As A Matter Of Law.

A reviewing court is not required to accept the reasons given by the trial court for its judgment. The trial court's judgment may be affirmed on any grounds called for by the record, regardless of whether the court relied on those grounds and regardless of whether its reason was correct. *Scivally v. Time Insurance Co.* (10th Cir. 1983), 724 F. 2d 101; *Lum Wan v. P. A. Esperdy* (2nd Cir. 1963), 321 F. 2d 123; *Busch v. Graphic Color Corp.* (1996), 169 Ill. 2d 325, 662 NE 2d 397, 214 Ill. Dec. 831, *cert. den.*, 117 S. Ct. 55, 136 L. Ed. 2d 18; 5 Am. Jur. 2d, *Appellate Review*, sec. 829, pgs. 488-89 (1995).

Under Rule 50 of the Federal Rules of Civil Procedure, judgment as a matter of law may be entered for the defendant when "there is no legally sufficient evidentiary basis" for the plaintiff's claim. In the instant case, Allied was entitled to judgment as a matter of law. The judgment in favor of Allied was, therefore, properly affirmed regardless of the jury's verdict, as the case against Allied should not have been submitted for the jury's decision. Accordingly, the petition for writ of certiorari filed herein should be denied.

(a) Plaintiffs Failed To Prove That Allied's Product Was Involved In The Accident, Or That Allied Knew The Use To Which A Conveyor Would Be Put In The New Warehouse Unloading Area Constructed By Others.

In a product liability action, the plaintiff must identify the manufacturer of the product. *Webber v. Armstrong World Industries, Inc.* (4th Dist. 1992), 235 Ill. App. 3d 790, 601 NE 2d 286, 175 Ill. Dec. 889, *app. den.*, 148 Ill. 2d 654, 610 NE 2d 1276, 183 Ill. Dec. 32. In *Schmidt v. Archer Iron Works, Inc.* (1970), 44 Ill. 2d 401, 256 NE 2d 6, for example, a judgment for the defendant was affirmed because the plaintiff failed to establish a sufficient connection between the defendant and an admittedly defective "eye" pin. Manufacturers are not general insurers of their industry or of products made by others in the industry. *See, Smith v. Eli Lilly & Co.* (1990), 137 Ill. 2d 222, 560 NE 2d 324, 148 Ill. Dec. 22, at pg. 43 (market share liability theory rejected).

Petitioners in the case at bar failed to prove that Allied's product was involved in the accident. In fact, it was undisputed that the new warehouse and unloading area were built by Southern Systems and that Allied had nothing to do with it. Petitioners introduced no evidence indicating that an Allied product was being used in the new area. The jury was permitted to speculate as to whether an Allied dolly or chain were involved. One fact, however, may not be inferred when a contrary fact could be inferred with equal certainty from the same evidence. *Billman v. Frenzel Construction Co.* (1st Dist. 1994), 262 Ill. App. 3d 681, 635 NE 2d 435, 200 Ill. Dec. 96, at pg. 101.

Southern and Nascote were free to design and build a conveyor and unloading area however they desired. According to the testimony adduced at trial, the new conveyor and unloading area were actually constructed and laid out differently from the Allied product. Even if Southern and Nascote used the Allied conveyor as a model and attempted to reproduce it exactly, Allied cannot be held legally responsible for the result. A party may design a product or provide some other service related to the product and have no liability, so long as the party remains outside the chain of manufacturing and distribution. *Mechanical Rubber and Supply Co. v. Caterpillar Tractor Co.* (3rd Dist. 1980), 80 Ill. App. 3d 262, 399 NE 2d 722, 35 Ill. Dec. 656. In the instant case, Allied was clearly outside the stream of commerce with regard to the new construction and profited nothing from it. Furthermore, Allied cannot be charged with knowledge of how a conveyor would be used in an unloading area which had not even been conceived by the time Allied completed its work for Durr.

(b) Plaintiffs Failed To Prove That Allied's Floor Conveyor, Which Was Built To Durr's Specifications And Was A Component Of The Painting Operation, Was Itself Unreasonably Dangerous Or That The Conveyor Became Unreasonably Dangerous When Integrated Into The Finished Product.

It was undisputed at trial that Allied built the floor conveyor involved strictly according to the specifications provided by Durr. In *Hunt v. Blasius* (1979), 74 Ill. 2d 203,

384 NE 2d 368, 23 Ill. Dec. 574, the Illinois Supreme Court explained that:

> "An independent contractor owes no duty to third persons to judge the plans, specifications or instructions which he has merely contracted to follow. If the contractor carefully carries out the specifications provided him, he is justified in relying upon the adequacy of the specifications unless they are so obviously dangerous that no competent contractor would follow them." 23 Ill. Dec., at pg. 577.

In the instant case, Allied carefully carried out Durr's specifications. There was no evidence adduced to indicate that the specifications were "so obviously dangerous that no competent contractor would follow them." For that reason, Allied owed no duty and breached no duty owed to the plaintiffs.

The Allied product involved in this case was the floor conveyor only. Allied was not responsible for the entire paint line, which was designed and built by other companies. The bumper carriers or racks were specifically excluded from the contract and were designed, built and installed by Nascote itself. Furthermore, Allied had no responsibility for designing an unloading process for the bumpers or to train Nascote employees in any such process. In fact, Allied did not know if the bumpers were to be removed manually or by machine. Allied was, therefore, the manufacturer of a component part of the paint line, which was used by Nascote in the process of painting bumpers.

Illinois law is very clear that because the manufacturer of a component part has no control over that part

once it is sold and no control over its use in the final assembly of a machine, a component part manufacturer may not be held liable if an injury resulted from a dangerous condition created by the party who created the final product. *Depre v. Power Climber, Inc.* (1st Dist. 1994), 263 Ill. App. 3d 116, 635 NE 2d 542, 200 Ill. Dec. 203. As explained by the Seventh Circuit in *Estate of Carey by Carey v. Hy-Temp Manufacturing, Inc.* (7th Cir. 1991), 929 F. 2d 1229:

> "Manufacturers of component parts made to specifications are liable for injuries caused by the fully assembled products, but only if **the component part** was in an unreasonably dangerous condition when it left the defendant's control or if the specifications obviously showed **the part** would become dangerous when integrated into the finished product." 929 F. 2d, at pg. 1234. (emphasis added).

The Illinois Supreme Court has indicated that a component part manufacturer can be held liable only when the injury is directly attributable to a defect in the component part. *Pasquale v. Speed Products Engineering* (1995), 166 Ill. 2d 337, 654 NE 2d 1365, 211 Ill. Dec. 314.

The recent opinion in *Rotzoll v. Overhead Door Co.* (4th Dist. 1997), 289 Ill. App. 3d 410, 681 NE 2d 156, 224 Ill. Dec. 174, illustrates Illinois law regarding the liability of component part manufacturers. Plaintiff's decedent in *Rotzoll* was using a walker to cross the threshold of an automatic sliding door when the door closed, knocking her down and injuring her. Plaintiff contended that safety beams which were supposed to prevent the door from

closing failed to detect the walker, thereby causing the accident.

The defendant, Overhead Door, in the *Rotzoll* case manufactured and sold the automatic sliding door, which included a twin "safety-beam" system for threshold protection. The door system was ordered, installed and configured by Tee Jay Central, Inc. Tee Jay ordered and used motion detectors which initiated the opening and closing of the door from two other manufacturers who were not parties to the action.

In affirming summary judgment in favor of Overhead Door, the court of review explained that:

> "The law in Illinois is clear that the obligation that gives rise to a duty to avoid reasonably foreseeable injury to another does not extend to the anticipation of how manufactured components, not themselves inherently dangerous or defective, can become potentially dangerous when integrated into a unit designed, assembled, installed and sold by another. [Citations omitted.]" 224 Ill. Dec., at pg. 177.

Since the plaintiff failed to prove a defect in the Overhead Door product, summary judgment was properly entered. Illinois case law on the subject all emphasizes that a defect in the component part itself must be present to impose liability on its manufacturer. *Sparacino v. Andover Controls Corp.* (1st Dist. 1992), 227 Ill. App. 3d 980, 592 NE 2d 431, 169 Ill. Dec. 944; *Ruegger v. International Harvester Co.* (1st Dist. 1991), 216 Ill. App. 3d 121, 576 NE 2d 288, 159 Ill. Dec. 619; *Kokoyachuk v. Aeroquip Corp.* (1st Dist. 1988), 172 Ill. App. 3d 432, 526 NE 2d 607, 122 Ill. Dec. 348; *Loos v. American Energy Savers, Inc.* (4th Dist. 1988),

168 Ill. App. 3d 558, 522 NE 2d 841, 199 Ill. Dec. 179; *Curry v. Louis Allis Company, Inc.* (1st Dist. 1981), 100 Ill. App. 3d 910, 427 NE 2d 254, 56 Ill. Dec. 174. This interpretation is also consistent with the general trend and cases from other jurisdictions. *See, Restatement, Third, Torts: Products Liability*, sec. 5, pg. 130, *et seq.*, including the Comments, Illustrations and Notes (1998).

It was undisputed in the case at bar that Allied's conveyor was reasonably safe when it left the manufacturer's control. Allied had no control over the use of its conveyor in the completed system, the number or type of bumper carriers to be used, or the manner of unloading bumpers. Petitioners' evidence was all directed to proving alleged defects in the bumper carriers, to Nascote's decision to unload bumpers manually and to Nascote's failure to train its employees in that process. The Allied conveyor, which was only 14 inches high at its highest point, merely moved slowly forward, as it was designed to do. No defect in the conveyor itself was involved in the accident. At most, the conveyor provided a mere condition or substrate which was acted upon by others to produce Mrs. Furlow's accident.

II. The Judgment In Favor Of Allied Should Be Affirmed Based Upon The Jury's Verdict.

The interpretation and reconciliation of verdicts and special interrogatories is a matter of federal law and is entrusted to the sound discretion of the trial court. *Elston v. Morgan* (7th Cir. 1971), 440 F. 2d 47; *Cundiff v. Washburn* (7th Cir. 1968), 393 F. 2d 505. In the instant case, the

District Court properly found that Verdict Form D consisted of a general verdict accompanied by written interrogatories under Rule 49(b) of the Federal Rules of Civil Procedure. The Court further found that the jury's answers to the written interrogatories controlled the general verdict and entered judgment in favor of Allied. The District Court's ruling was, therefore, properly affirmed on appeal.

(a) Verdict Form D Was A General Verdict With Written Interrogatories Under Federal Rule 49(b).

District Courts have wide discretion in formulating special interrogatories for submission to the jury. *Romano v. Howarth* (2nd Cir. 1993), 998 F. 2d 101. Special interrogatories may consist of mixed questions of law and fact. *Kissell v. Westinghouse Electric Corp. Elevator Division* (1st Cir. 1966), 367 F. 2d 375.

In the instant case, the District Court correctly determined that Verdict Form D consisted of a general verdict with written interrogatories under Federal Rule of Civil Procedure 49(b). In *Turyna v. Martam Construction Co., Inc.* (7th Cir. 1996), 83 F. 3d 178, The Court explained that:

> "General verdicts simply ask the jury to answer the question 'who won', and if the winning party is entitled to a monetary award to answer the question 'how much'." 83 F. 3d, at pg. 181.

Under that definition, the initial finding and paragraph "First" of Verdict Form D qualified as a general verdict. Paragraph "Third" of Verdict Form D, however, specifically told the jury that, "If you find any defendant not

liable to the plaintiff * * * then you should enter a zero (0) as to that person or persons." The District Court pointed out in its order entering judgment in favor of Allied that this constituted a "necessary factual determination."

A similar situation arose in *Barnes v. Brown* (7th Cir. 1970), 430 F. 2d 578. In that case, the jury returned a general verdict in favor of the plaintiff, but answered a written interrogatory to indicate that plaintiff was guilty of contributory negligence. According to the law at the time, contributory negligence was an absolute bar to the plaintiff's claim. Accordingly, the District Court accepted the interrogatory answer and entered judgment in favor of the defendant. The District Court's decision was affirmed on appeal, with The Court stating that when the answer to a special interrogatory contradicts a general verdict, the special interrogatory controls.

(b) Because Plaintiffs Did Not Request That The Jury Be Reconvened, Plaintiffs Waived The Right To Object To Any Inconsistency Between The General Verdict And The Answers To The Special Interrogatories.

In *Cundiff v. Washburn, supra,* the plaintiff brought a negligence action arising out of an automobile accident. The defendant filed a counterclaim against the plaintiff. The jury returned a verdict finding against the plaintiff on his claim and against the defendant on her counterclaim. The jury also responded to a special interrogatory by finding that the plaintiff had not been contributorily negligent. The trial court entered judgment against both claimants, consistent with the jury's general verdict.

On appeal, the plaintiff argued that under Indiana law one of the parties must have been at fault and that in its special interrogatory answer the jury found that the plaintiff was not at fault. The plaintiff concluded that the defendant must have been at fault as a result. Plaintiff asserted, therefore, that the jury's verdict against the plaintiff was inconsistent with the interrogatory answer. The Seventh Circuit, however, found that the plaintiff had waived the argument by answering in the negative when the trial court asked if the jury should be returned to the jury room for further deliberation.

Petitioners in the case at bar failed to request that the jury be returned to the jury room to resume its deliberations. As explained by The Court in *Cundiff*, this left, "to the trial court alone the discretion to choose the means of correcting inconsistency", subject to appellate review. 393 F. 2d, at pg. 507.

(c) The Entry of Judgment In Favor Of Allied Was Not Against The Manifest Weight Of The Evidence, Nor Did The District Court Abuse Its Discretion In Entering Judgment.

Allied has already analyzed the evidence in this case at great length in arguing that it was entitled to judgment as a matter of law. Accordingly, Allied will not repeat that analysis here. Under the facts of this case, it is clear that the jury intended to exonerate Allied and find Nascote directly liable to the plaintiffs. The jury chose the only vehicle seemingly available to accomplish this objective. One purpose of special interrogatories is to give parties

the opportunity to ascertain whether the jury has understood and applied the law properly to the proven facts. *Gelfand v. Strohecker* (D.C. Ohio 1956), 150 F. Supp. 655, *aff'd*, (6th Cir. 1957), 243 F. 2d 797. The special interrogatories here accomplished that objective, as they disclosed that the jury was attempting to produce a result not permitted by the applicable law.

CONCLUSION

For the reasons stated herein, the respondent, Allied Conveyor, Inc., respectfully requests that petitioners' Petition for Writ of Certiorari be denied.

Respectfully submitted,

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